

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY KIRKWOOD,

Plaintiff,

v.

K. RAMIREZ,

Defendant.

Case No.: 1:23-cv-00314-SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS AND
DEFENDANTS**

(Docs. 8 & 9)

14-DAY OBJECTION PERIOD

Clerk of the Court to Assign District Judge

Plaintiff Larry Kirkwood is appearing pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. RELEVANT BACKGROUND

On October 17, 2023, the Court issued its First Screening Order. (Doc. 8.) It found Plaintiff stated a cognizable Eighth Amendment failure to protect claim against Defendant Ramirez but had failed to state any other cognizable claim against any other defendant. (*Id.* at 4-14.) Plaintiff was directed to do one of the following within 21 days: (1) notify the Court he did not wish to file an amended complaint and instead was willing to proceed only on the Eighth Amendment failure to protect claim against Defendant Ramirez with the remaining claims to be dismissed; or (2) file a first amended complaint curing the deficiencies identified in the Court's order, or (3) file a notice of voluntary dismissal. (*Id.* at 15-16.)

1 On November 2, 2023, Plaintiff filed a notice indicating his wish to proceed only on the
2 Eighth Amendment failure to protect claim against Defendant Ramirez. (Doc. 9.)

3 **II. ORDERS AND RECOMMENDATIONS**

4 The Clerk of the Court is DIRECTED to assign a District Judge to this action.

5 Further, for the reasons given above, the Court **RECOMMENDS** that:

- 6 1. This action **PROCEED** solely on Plaintiff's Eighth Amendment failure to protect
7 claim against Defendant K. Ramirez, the remaining claims and defendants to be
8 dismissed; and
- 9 2. Defendant Warden Brian Phillips be **DISMISSED** from this action.

10 These Findings and Recommendations will be submitted to the district judge assigned to
11 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these
12 Findings and Recommendations, a party may file written objections with the Court. The
13 document should be captioned, "Objections to Magistrate Judge's Findings and
14 Recommendations." Failure to file objections within the specified time may result in waiver of
15 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
16 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

17 IT IS SO ORDERED.

18 Dated: November 13, 2023

19 /s/ Sheila K. Oberto
20 UNITED STATES MAGISTRATE JUDGE

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